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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 12, 2001

Magalie Salas
Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

RE: In the Matter of Request for Review of the Decision of the Universal Service Administrator by Oklahoma City School District I-89 Under FCC Docket Nos. 97-21 and 96-45 (Form 471 No. NEC.471.03-16-00.29900007)

Dear Ms. Salas:

Enclosed please find the original and four copies of the Request for Review of the Oklahoma City School District I-89 in the above-referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Orin R. Heend", is written over the word "Sincerely,".

Orin R. Heend

Funds For Learning
2111 Wilson Blvd. #700
Arlington, VA 22201

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List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	Form 471 No.
Oklahoma City School District I-89)	NEC.471.03-16-00.29900007
Oklahoma City, OK)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

To: The Common Carrier Bureau

REQUEST FOR REVIEW

Oklahoma City School District I-89 ("School District"), by its representative, hereby seeks review of the determination of the Schools and Library Division of the Universal Service Administrative Company ("SLD"), dated September 12, 2001, refusing to process six requests for universal service support (FRNs not assigned) for failure to meet minimum processing standards.

I. Statement of the Facts

On October 24, 2000, the SLD advised the School District that it would not process six funding requests because "[t]he Form 470 cited for this funding request has an allowable contract date that is after the close of the window on 4/6/1999." (Attachment A). The School District

appealed, contending that the SLD could not refuse to process the funding requests for that reason. (Attachment B).

On September 12, 2001, eleven months later, the SLD issued a Decision on Appeal, affirming its original decision not to process the six funding requests. (Attachment C). This time, however, the SLD offered a new and completely different explanation. The SLD conceded that it should not have refused to process the funding requests for the reason it had given the School District originally, but that it had nevertheless “properly denied” the requests.

The correct reason for denying the requests, the SLD reasoned in retrospect, could be traced back to the “establishing” Form 470, which the School District had filed on-line on December 10, 1999, less than half way through Program Year Two (“PY2”). That form, the SLD claimed, could not be the basis for a “Second Window Funding Year Two Form 471, because the School District entered Program Year Three (“PY3”), rather than Program Year Two (“PY2”), in Block 1 Item 2 of the on-line form. The SLD explained that this was fatal to the School District’s application because “[v]endors responding to [the School District’s] Form 470 would be lead to believe that [the School District was] requesting bids for services to be delivered between July 1, 2000 through June 30, 2001.”

The following are significant facts that the SLD failed to consider:

- The School District filed the Form 470 in issue on-line *in Funding Year Two*.
- The Form 470 had an allowable contract date *in Funding Year Two*.
- The School District awarded the resulting contract after the allowable contract date *in Funding Year Two*.
- The School District filed the Form 471 *in Funding Year Two* during the “outside the window” or supplemental *Funding Year Two* window application period.
- Service under the School District’s contracts was set to begin *in Funding Year Two*.
- The School District had funds available to pay for the non-discounted portion of the requested services *in Funding Year Two*.

II. Discussion

This time, the SLD has decided not to process the School District's requests because of an allegedly misleading entry on its Form 470. It is interesting to note that in reaching this conclusion, the SLD failed to mention that it has received complaints from applicants that no PY2 option was available from the drop-down menu for Block 1, Item 2 of the on-line form at that time. (*See* further discussion below.) Nor did the SLD explain how or why, as a practical matter, the incorrect time period on the form actually discouraged competition among vendors, whom the SLD admits were responding to the Form 470 anyway.

Finally and most important, the SLD made a material factual omission of its own. Inasmuch as the supplemental PY2 window application period ended shortly before the close of PY2, the SLD knew that it was not going to issue any supplemental PY2 funding commitments until well into PY3. This delay, as a practical matter, transformed millions of dollars of supplemental PY2 requests into *de facto* PY3 requests and beyond. The SLD knew that numerous applicants, like the School District, were not going to purchase the services they had requested in their supplemental PY2 applications until the SLD granted them funding sometime, hopefully, *in PY3*. Under these circumstances, therefore, to deny funding to the School District on the grounds that vendors may have been misled into believing that the School District was requesting services for PY3, rather than PY2, is utterly disingenuous.

Note that in the fall of 1999, the SLD issued a new version of Form 470. On October 25, 1999, the SLD altered the interface and underlying architecture of its web site to accommodate this change. Therefore, on December 10, 1999, when the School District went on-line to post its Form 470, the SLD web site's "Program Year" field did *not* include (to the best of our knowledge and belief) a 1999 – 2000 (PY2) option. Although a staff person in SLD Problem Resolution claims that this option was available at the time, he could not provide us with a screen shot or otherwise support this assertion.

Discussions we have had with other Form 470 filers, including a state E-rate coordinator who follows the program very closely, support our contention that no PY2 option was available at the time the School District went on-line to file its Form 470. We acknowledge that SLD later made this option available, but we do not believe it occurred until after the close of the PY3 filing window. [Therefore, in connection with this Appeal, we request the Commission to instruct the SLD to furnish to the Commission and to us an archived copy of the relevant page of the SLD on-line Form 470 exactly as it appeared on December 10, 1999.]

Because the SLD's web site, on December 10, 1999, made it impossible for the School District to designate a Form 470 for PY2, we submit that there is simply no equitable way to deny funding on that basis.

Moreover, no reasonable E-rate applicant going on-line on December 10, 1999 to file a Form 470 for services to be delivered (or possibly to be delivered) in both PY2 *and* PY3 ever would have selected the PY2 option, *even if* it was available. Such a choice would have been ridiculous. The original PY2 window application period was long over, and applicants had no reason to believe, based on their PY1 experience and SLD reports, that any additional funding would remain for PY2 471s filed at that time. The PY3 window application period, on the other hand, was then in progress. So, in the final analysis, what choice did the applicant really have? Of course the applicant would choose PY3. He or she would have been foolish to do otherwise. How could penalizing the School District for selecting "PY3" in these circumstances possibly make sense?

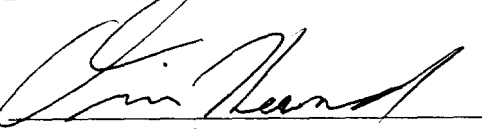
One question remains, however. Should the SLD have expected a reasonable, well-informed E-rate applicant, who selected PY3 on the on-line Form 470 on December 10, 1999, to go back on-line and complete a duplicate Form 470 for the exact same contract, but this time to select PY2 from the drop-down menu (assuming this option was available)? The answer, we submit, is definitely not. Nothing in the regulations, the SLD web site, or any other published

information that we have come across to help guide the applicant through this now complex regulatory process would have led any reasonable, well-informed E-rate applicant even to think that he or she would be required to file two identical establishing Form 470's for *the exact same contract at the exact same time*, simply because services under the contract would or could be delivered during a time period that bridged two funding years.

III. Requested Relief

For these reasons, the School District requests the Commission to remand this matter to the SLD with instructions to process the six funding requests in issue.

Respectfully submitted on behalf of
OKLAHOMA CITY SCHOOL DISTRICT I-89

By: 
Orin R. Heend

Funds For Learning, LLC
2111 Wilson Blvd. (Suite 700)
Arlington, VA 22201
703-351-5070

cc: Debbie Sharp, Executive Director of Finance Services.
Oklahoma City School District I-89
PO Box 25428 (900 N. Klein)
Oklahoma City, OK 73125-0428

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PAGE 08

RECEIVED: 11/17/00 4:13PM; ->FUNDS FOR LEARNING; #61; PAGE 2

11/17/2000 16:00 4053417008

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PAGE 02

Attachment A



Schools and Libraries
Division
P.O. Box 7026
Lawrence, KS 66044-7026
Or
3833 Greenway Dr.
Lawrence, KS 66046

October 24, 2000

Re: NCS Bar Code: NEC.471.03-16-00.29900007

RUSSELL WOODWARD
OKLAHOMA CITY SCHOOL DIST I-89
P.O. BOX 25428
OKLAHOMA CITY, OK 73125-0428

Dear Applicant:

This letter is to notify you of rejection of some of the Funding Requests made on your FCC Form 471, *Services Ordered and Certification Form*, Funding Year 2. One or more of the Funding Requests as set forth in a row(s) of Items 15 or 16 did not meet Minimum Processing Standards and cannot be processed. Be sure to check your copies of all Form 471s you have submitted for the listed USCNs or for blank USCNs.

Funding Requests that are not cited below will be processed and should not be resubmitted.

Service Type:	Internal Connections (Shared)
Pre-Discount Cost:	\$883,083.68
Discount Percentage:	85
Reason for Denial:	The Form 470 cited for this funding request has an allowable contract date that is after the close of the window on 4/6/1999.

Service Type:	Internal Connections (Shared)
Pre-Discount Cost:	\$37,821.95
Discount Percentage:	85
Reason for Denial:	The Form 470 cited for this funding request has an allowable contract date that is after the close of the window on 4/6/1999.

Service Type:	Internal Connections (Shared)
Pre-Discount Cost:	\$13,365.00
Discount Percentage:	85
Reason for Denial:	The Form 470 cited for this funding request has an allowable contract date that is after the close of the window on 4/6/1999.

Service Type:	Internal Connections (Shared)
Pre-Discount Cost:	\$79,868.00

09/17/2001 13:40 4053417008

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PAGE 09

RECEIVED: 11/17/00 4:14PM; ->FUNDS FOR LEARNING; #61; PAGE 3

11/17/2000 16:00 4053417008

FUNDSFORLEARNING

PAGE 03

Attachment A

Discount Percentage: 85**Reason for Denial:** The Form 470 cited for this funding request has an allowable contract date that is after the close of the window on 4/6/1999.**Service Type:** Internal Connections (Shared)**Pre-Discount Cost:** \$70,752.00**Discount Percentage:** 85**Reason for Denial:** The Form 470 cited for this funding request has an allowable contract date that is after the close of the window on 4/6/1999.**Service Type:** Internal Connections (Shared)**Pre-Discount Cost:** \$217,870.00**Discount Percentage:** 85**Reason for Denial:** The Form 470 cited for this funding request has an allowable contract date that is after the close of the window on 4/6/1999.

We also encourage you to visit the SLD Web Site if you have Internet access, at www.sl.universalservice.org. The Web Site provides Minimum Processing Standards and the "Form 470 Search Posted" tool which allows you to verify the USCIN, completion status, and the Allowable Contract Date of your Form 470. Additional assistance is available by calling the Client Service Bureau at 1-888-203-8100 and by e-mail at question@slcfund.org. Client Service Representatives are available from 8:00 a.m. to 8:00 p.m. EST, Monday through Friday.

Schools and Libraries Division of Universal Service Administrative Company

Attachment B



November 20, 2000

Letter of Appeal
Schools and Libraries Division
Box 125-Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981.

Letter of Appeal

Applicant Name: Oklahoma City School District I-89
Billed Entity No.: 139831
NCS Bar Code: NEC.471.03-16-00.29900007

USAC Letter Date: October 24, 2000
Program Year: Funding Year Two
Form 471 App. No: N/A
FRN: N/A
Service Type: Internal Connections (six funding requests)
Discount: 85% (six funding requests)

Reason for Rejection:

"The Form 470 cited for this funding request has an allowable contract date that is after the close of the window on 4/6/1999." (see attached USAC letter dated October 24, 2000)

We are filing this appeal on behalf of Oklahoma City School District I-89 ("OCSD").

The SLD has concluded that it cannot process six funding requests included on OCSD's Funding Year Two application because they are based on Form 470s with allowable contract dates *"after the close of the [Funding Year Two] window on April 6, 1999."* This conclusion has no legal foundation, makes little sense in the context of the E-rate application process as a whole, and creates an ill-advised precedent. Accordingly, for the reasons set forth below, we request that the SLD reinstate the funding requests, continue to process them, and fund them in accordance with program rules.

Attachment B

Undisputed Facts

- OCSD filed the Form 470s in issue in Funding Year Two.
- OCSD filed the Form 470s on-line in Funding Year Two.
- The Form 470s that OCPS filed in Funding Year Two had allowable contract dates in Funding Year Two.
- OCSD awarded the resulting contracts in Funding Year Two but outside the Funding Year Two window (of course, the Funding Year Two window closed before Funding Year Two even opened).
- Service under OCSD's Funding Year Two contracts was set to begin in Funding Year Two.
- OCSD had funds available to pay for the non-discounted portion of these services in Funding Year Two.

Discussion

THE FCC ESTABLISHED A FILING WINDOW TO BRING GREATER EQUITY TO THE APPLICATION/FUNDING PROCESS, NOT TO GIVE THE SLD AN ADMINISTRATIVE TOOL TO STOP THE PROCESSING OF APPLICATIONS.

As the FCC envisioned the E-rate application process originally, applications were to be funded on a "first come-first served" basis. Because of perceived inequities in this funding methodology and for other reasons, the FCC decided to create a "window" application period in which all applications filed inside a funding year "window" would be treated as if simultaneously filed. (Third Report and Order adopted October 1, 1997). The FCC Order did not eliminate entirely, however, the prospect of first come-first served funding. If funding above a designated amount remained after the SLD had completed funding all *inside the window* applications, the FCC ruled, then the SLD would continue to fund all applications filed *outside the window* on a first come-first served basis.

The FCC has never granted authority to the SLD to use a window period deadline for any purpose other than to define the universe of applicants entitled to have their Form 471 applications treated as if simultaneously filed. More to the point, the FCC has never in any respect tied the SLD's ability *to process* a Form 471 funding request, as opposed to *funding* a Form 471 funding request, to the end of a window application period. And more to the point still, the FCC has never ruled, implied, or even suggested that for a funding request to be valid, the request *must* be tied to a Form 470 that has an allowable contract date *inside* the window filing period for the funding year in which discounts are being requested.

Such a rule would be flawed on its face, as an applicant would never be able to complete the two-step 470/471 application process for a particular year -- *after* the window for that year has closed. Moreover, we know this effect cannot be what the SLD intended, as the SLD itself advised applicants to file "outside the window" Form 470s for Year Two in or around late February 2000, when it became apparent that there would be additional Year Two funds available. Naturally, those Form 470s would have had allowable contract dates after the close of the window on April 6, 1999, just like the ones in issue here.

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PAGE 07


Attachment B

By refusing to process funding requests based on Form 470s with allowable contract dates *after the close of the Funding Year Two window*, the SLD has unilaterally, without authority, and in effect turned the Year Two window application period into the *de facto* "exclusive" Year Two application period, a result that the FCC clearly never intended. Therefore, the SLD cannot refuse *to process* the funding requests in issue here for that reason.

Requested Relief

The funding requests in issue satisfy all of the program's published minimum processing standards, are valid and complete in *all* other respects, and were timely filed in Funding Year Two before the close of the supplemental filing window. Accordingly, they should be processed and funded to the fullest extent possible under FCC program rules

Sincerely,



Orin Heend

ohend@fundsforlearning.com

On behalf of:

Oklahoma City School District I-89

PO Box 25428

Oklahoma City, OK 73125-0428

Attachment C



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 1999-2000

September 12, 2001

Orin Heend
Funds For Learning
Re: Oklahoma City School District I-89
229 North Broadway
Edmond, OK 73034

Re: Billed Entity Number: 139831
471 Application Number: NEC.471.03-16-00.29900007
Funding Request Number(s): 6 Requests Not Assigned
Your Correspondence Dated: November 20, 2000

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Two Second Window Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 30-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 6 Requests Not Assigned
Decision on Appeal: **Denied in full**
Explanation:

- Your appeal claims that the SLD was in error in denying this application. You feel it sets a precedent that is not supported by previous FCC Orders. You claim that this denial makes it impossible for an applicant to file an outside the window Form 470 and Form 471. You would like the SLD to reconsider their decision to deny funding for this application.
- After thorough review of your appeal it has been determined that your request was properly denied, but the denial reason given to you was incorrect. A Funding Year Two Form 470 with an allowable contract date after the close of the window on April 6, 1999 can be used to establish the bidding for a Second Window Funding Year Two Form 471. The reason for your denial is explained below.

Attachment C

- On your Funding Year Two Form 471 you indicated that the establishing bidding for these services was Funding Year Three Form 470 Number: 218470000265649. On Block 1 Item 2 of your Form 470 you indicated that you were requesting bids for services to be delivered during the Funding Year July 1, 2000 through June 30, 2001. The Form 471 you filed was for services to be delivered between July 1, 1999 through June 30, 2000. Vendors responding to your Form 470 would be lead to believe that you were requesting bids for services to be delivered between July 1, 2000 through June 30, 2001. Therefore, a Funding Year Three Form 470 is not a valid Form 470 for the purpose of establishing the bidding for Funding Year Two Services. Accordingly, your Form 471 was denied because it failed to reference a valid Funding Year Two Form 470.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted on the website at <www.universalservice.org>. **You must file your appeal with the FCC no later than 30 days from the date on this letter for your appeal to be filed in a timely fashion.**

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

CC: Dr. Marvin Crawford, Oklahoma City School District I-89